

ORIGINAL

FORM FOR MOTIONS UNDER 28 USC 2255

Name Thomas Reedy

4-07CV-024-Y

Prison Number 25673-177

Place of Confinement F.C.I. Terre Haute, P.O. Box 33

Terre Haute, IN 47808

United States District Court for the Northern District of Texas, Ft. Worth Division

Criminal Case No. 00 CR 0054

Civil Case No. \_\_\_\_\_

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS <b>FILED</b> JAN - 9 2007 CLERK, U.S. DISTRICT COURT By _____ Deputy
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(to be supplied by Clerk of U. S. District Court)

United States of America,

v.

Thomas Reedy

(full name of movant)

(If movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

**MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY**

(1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

(2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.

(4) If you do not have the necessary funds for transcripts, counsel, appeal, and other costs

connected with a motion of this type, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to pay the costs. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(5) Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.

(6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.

(7) When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is 501 W. 10<sup>th</sup> Street, Room 310, Ft. Worth, Texas 76102.

(8) Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

#### MOTION

1. Name and location of court which entered the judgment of conviction under attack :

U.S. District Court for the Northern District of Texas, 501 West 10<sup>th</sup> Street, Ft. Worth, Texas  
76102

2. Date of judgment of conviction: August 6, 2001, and resentenced after remand.

3. Length of sentence: 180 years

4. Nature of offense involved (all counts): Child Pornography

5. What was your plea? (Check one)

(a) Not guilty XXXX

(b) Guilty \_\_\_\_\_

(c) Nolo contendere \_\_\_\_

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or

indictment, give details:

N/A

6. Kind of trial: (Check one)

(a) Jury XXX

(b) Judge only     

7. Did you testify at the trial?

Yes XXX No     

8. Did you appeal from the judgment of conviction?

Yes XXX No     

9. If you did appeal, answer the following:

(a) Name of court U.S. Court of Appeals for the Fifth Circuit

(b) Result Conviction Affirmed, remanded for resentencing

(c) Date of result October 16, 2002

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes X No XXX

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court Supreme Court

(2) Nature of proceeding Appeal from resentencing

(3) Grounds raised

N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes N/A No X

(5) Result Cert. denied

(6) Date of result 1/9/06

(b) As to any second petition, application or motion give the same

information:

(1) Name of court N/A

(2) Nature of proceeding \_\_\_\_\_  
\_\_\_\_\_

(3) Grounds raised \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \_\_\_\_ No \_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(d) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes \_\_\_\_ No XXX

(2) Second petition, etc. Yes \_\_\_\_ No \_\_\_\_

(3) Third petition, etc. Yes \_\_\_\_ No \_\_\_\_

(e) If you did not appeal from the adverse action on any petition,

application or motion, explain briefly why you did not: \_\_\_\_\_  
\_\_\_\_\_

12. State concisely every ground on which you claim that you are being held unlawfully.

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based

your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.

(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

(e) Conviction obtained by a violation of the privilege against self-incrimination.

(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.

(g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: Denial of Effective Assistance of Counsel

Supporting FACTS (tell your story briefly without citing cases or law):

As will be more fully explained in a subsequent Memorandum in support of this Motion, Movant was denied the effective assistance of counsel for the following reasons:

1. Counsel failed to investigate and prepare impeachment witnesses identified to him prior to trial.
2. Counsel failed to investigate and prepare impeachment evidence that was made available to him prior to trial.

3. Counsel failed to investigate and prepare exculpatory evidence that was made available to him prior to trial.
4. Counsel failed to investigate and prepare exculpatory witnesses who were made known to him prior to trial.
5. Counsel failed to investigate the expertise and records of prosecution witnesses who were made known to counsel prior to trial.
6. Counsel failed to identify a conflict of interest between a critical government witness and counsel, resulting in the admission of false evidence given by that witness.

B. Ground two: Newly discovered evidence

Supporting FACTS:

During the Spring and Summer of 2006 the Petitioner learned for the first time of numerous criminal cases brought in England and other European countries against thousands of defendants there, all based on testimony and evidence that originated in the Petitioner's trial. In the course of litigating those cases, law enforcement officers whose testimony played a critical role in this Petitioner's case testified under oath in ways materially contradicting their testimony in this trial. In addition, they have been shown, and in at least one case judicially determined, to have been giving false testimony in those cases.

The egregious conduct of these officers in the European cases both undermines the contradictory false testimony which they gave in this case, and establishes a material basis upon which to question their integrity with respect to other testimony here that the petitioner does not specifically know to be false, but which he would have more vigorously and seriously challenged had he known that the testifying officer(s) had such little respect for the truth..

C. Ground three: Gross prosecutorial misconduct

Supporting FACTS (tell your story briefly without citing cases or law):

As will be more fully explained in a subsequent Memorandum in support of this Motion, the government exceeded the bounds of Constitutional license when it built its case against the

Movant on false and misleading testimony by federal and state police agents. Many of the prosecution witnesses have testified in other venues since this trial, and have given testimony that contradicted the testimony that they gave in this trial. Moreover, they have been shown to be lying as to other matters in both this trial and in the subsequent proceedings in other jurisdictions.

The extent of the false and misleading testimony by government agents in this trial was so pervasive as to undermine confidence in Movant's conviction, and as to constitute deliberate governmental misconduct during and as an integral part of this prosecution.

Some of the governmental misconduct could, and should, have been discovered and exposed by effective defense counsel at this trial, but part of it was of technical or other natures which defense counsel could not reasonably have been expected to recognize. Indeed, had the police agents not later testified, and their testimonies not been subjected to much more critical investigation and analysis in other venues, the lies that they told in this trial might yet remain undiscovered.

D. Ground four: Ineffective assistance of post-conviction counsel

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Supporting FACTS (tell your story briefly without citing cases or law):

As will be more fully explained in a subsequent memorandum in support of this motion, Movant received ineffective assistance when his sentencing counsel failed to properly prepare and present a motion for new trial, based upon the failure of the government to disclose the true professional history and record of the witness Mike Marshall, resulting in denial of the motion for a new trial; and, in the subsequent direct appeal, resulting in the 5<sup>th</sup> Circuit finding that the testimony of Mr. Marshall was of small importance in the trial and upholding the court below, when in fact the testimony of Mr. Marshall established an indispensable element of the prosecution's case and could have been presented in post-conviction proceedings in a manner which would have effectively demonstrated its importance to the prosecution's case, thus meriting

the granting of the motion for new trial and, in the absence thereof, reversal on appeal.

Trial counsel was also ineffective in failing to identify and use knowledge of Mr. Marshall's background which was known, or should have been known, to him.

D. Ground five: Movant was denied his counsel of choice by governmental  
misconduct

Supporting FACTS (tell your story briefly without citing cases or law):

As will be more fully explained in a subsequent memorandum in support of this motion, the prosecution used false testimony, allegations, and evidence to accomplish a seizure of substantially all of the Movant's assets at the same time that it initiated her criminal case. In doing so, it made it impossible for Movant to retain and pay his original counsel of choice, forcing him to resort to a defense team which was not economically capable of effectively defending against the massive governmental misconduct brought to bear by the prosecution in this case.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

None of these grounds have been presented before, because this is my first post-conviction  
petition.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒ XXX

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing None

(b) At arraignment and plea Wes Ball 4025 Woodland Park Blvd., Suite 100  
Arlington Texas 76013 (817) 860-5000



(c) At trial \_\_\_\_\_ same. \_\_\_\_\_ (d) At sentencing \_\_\_\_\_ same.

(e) On appeal Christopher A. Curtis 819 Taylor St. Room 9A10  
Fort Worth, Texas 76102

(f) In any post-conviction proceeding none.

(g) On appeal from any adverse ruling in a post-conviction proceeding\_\_\_\_\_

Kenneth M. Tuccillo 385 Warburton Ave. Hastings-on-Hudson, New York 10706

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes XXXX No           

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes        No XXX

(a) If so, give name and location of court which imposed sentence

to be served in the future: n/a

(b) And give date and length of sentence to be served in the

future: n/a

(c) Have you filed, or do you contemplate filing, any petition attacking the

judgment which imposed the sentence to be served in the future?

Yes \_\_\_\_\_ No \_\_\_\_\_ n/a

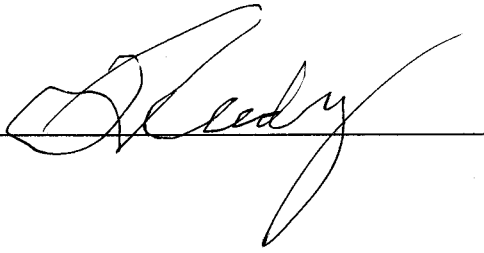
Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on August 4, 2006 (date).

Signature of Movant: \_\_\_\_\_



## AFFIDAVIT OF SERVICE

I hereby affirm that I have served one copy of the foregoing MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY on the United States Attorney for the Northern District of Texas by mailing same by First Class Mail to the following address on this 8<sup>th</sup> day of August, 2006, with proper postage prepaid.

*Jan. 2007*

**Mailed to:**

**United States Attorney  
Northern District of Texas  
501 W. 10<sup>th</sup> Street  
Ft. Worth, Texas**

